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CURRENT TOPICS

Lord Asquith of Bishopstone

THE secret of the charm of LORD ASQUITH OF BISHOPSTONE, who died on 24th August at the age of 64, was his great modesty. This was enhanced by the fact that his apparently effortless achievement was more than outstanding. Fourth son of the first marriage of a famous Prime Minister and leading advocate, he outdid his father's academic success by obtaining an open scholarship at Balliol, a double first in the classical schools, and the Craven, the Hertford, the Ireland and the Eldon Scholarships. In 1913 he was elected a fellow of Magdalen. After the first world war, in which he served in the Queen's Westminster Rifles, he was called to the Bar and in 1936 took silk. In 1938 Lord Maugham appointed him to the High Court Bench, and as events proved the appointment was felicitous. Charmingly polite and closely attentive, he won not only the respect but the enthusiastic affection of those who practised before him. In 1939 he was appointed the High Court judge attached to the General Claims Tribunal and in 1944 he was chairman of the Royal Commission on Equal Pay for Equal Work between men and women. In 1946 he became a Lord Justice of Appeal, and in 1951 he went to the Lords as a Lord of Appeal. His early death is a great loss to his country and to the law.

Mr. William Edward Mackenzie Mainprice

THE profession will have learned with regret of the death on 26th August of Mr. WILLIAM EDWARD MACKENZIE MAINPRICE, whose recent retirement from the Council of The Law Society brought to an end a period of no less than twenty-four years' service on that body. During that time he had served on the Legal Procedure, Parliamentary and Registrar's Committees, and it was only in July last that the Council passed a resolution regretting his decision not to offer himself for re-election. Admitted in 1903, he practised in Manchester, and in 1928 and 1939 was President of the Manchester Law Society, having been treasurer of that society from 1929 onwards.

The Landlord and Tenant Act, 1954

ALTHOUGH the Landlord and Tenant Act, 1954, does not come into operation until 1st October next, its provisions deserve and no doubt are receiving the intensive study of practitioners. Perhaps overshadowed a little by the immediate impact of the Housing Repairs and Rents Act, 1954, which is already in force, nevertheless it is undeniable that the Landlord and Tenant Act is concerned with matters more fundamental for the lawyer, and in this week's "Landlord and Tenant Notebook" readers will find the first of "R. B.'s" articles on the subject. Briefly, the Act provides in Pt. I for security of tenure for residential tenants under ground leases at rents too low to attract the protection of the Rent Acts, and in Pt. II for security of tenure for business, professional and similar tenants. The rights so created are exercisable in most cases by the initial service of a prescribed notice by one party on the other, and the necessary forms of notice have now been prescribed by the Lord Chancellor in the Landlord and Tenant (Notices) Regulations, 1954 (S.I. 1954

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No. 1107), which came into operation on 27th August. The reason for bringing these regulations into force more than a month before the Act itself becomes operative is to be found in Sched. IX, para. 1, which provides that where the date, or the end of a period, specified by a notice in one of the prescribed forms falls after 1st October *the notice will not be invalidated by reason of having been served before that date.* We understand that copies of the forms will shortly be available from the usual suppliers.

The Rent Increases

ON 30th August, 1954, the Housing Repairs and Rents Act came into operation. Landlords are now aware that the notice to tenants, which is the prerequisite to a claim for rent increase in respect of repairs, must be served six weeks before the date named therein on which the increase is payable. Some of the requirements of the Act are complicated, and the aid of solicitors has been, and no doubt will continue to be, sought in drawing the notices correctly. Indeed, some of the larger companies, owning numerous houses and flats, have had to postpone sending out their notices owing to the immensity of the task of making a separate dossier of the record of each flat or house let by them. The problem is not one which can be solved with the aid of circular letters, and the need for great care is emphasised by the fact that the requirements of the new Act are not such as to decrease the natural tendencies of tenants to litigate. In at least one case of numbers of flats let by a large company, a tenants' association has been formed to take steps to test the legality of the landlord's proposals. This is certainly a time for landlords to walk warily.

Repairs Increases: A Misapprehension

IF landlords must walk warily, tenants too may find that the Act has some unpleasant surprises in store for them. Wide publicity has been given to the statement on p. 4 of the official booklet "The New Act—Repairs and Rents" that "if the rent of the house is already more than twice the gross value, no repairs increase at all will be payable." Reference to s. 24 (1) of the Act makes it abundantly clear that what is referred to as "the rent of the house" is in reality the recoverable rent *less* rates payable by the landlord and payments for furniture or services or for improvements—a very different matter. Although the booklet goes on to qualify its use of the word "rent" in this manner, the statement quoted has been reproduced unadorned in the national Press and may have given rise to misapprehensions. It is only when the recoverable rent *as so reduced* equals or exceeds twice the gross value that a repairs increase is obviated. Indeed, a tenant paying a recoverable rent well in excess of twice the gross value may even find himself faced with the full repairs increase applicable to that gross value, as the following example shows: A tenant of a house in the County of London with a gross value of £70 (and hence a statutory repairs deduction of £18) pays a rent of £150 per annum. This includes, say, £50 for rates payable by the landlord, £2 for furniture and £5 for improvements. The recoverable rent of £150 is more than twice the gross value but nevertheless the full repairs increase of £36 (twice the statutory repairs deduction) can be charged because the rent less rates, etc. (£150 — (£50 + 2 + 5) = £93), together with the full repairs increase (£36) amounts only to £129, and hence does not exceed the "stopper" of—in this case—£140. If the "reduced rent" exceeded £104 (i.e., £140 — £36) only such proportion of the £36 repairs increase would be recoverable as is represented by the difference between the "reduced rent" and the "stopper" (see s. 24 (2)).

The New Approach to Directions

READERS will find at p. 598 of this issue the article which we recently promised on procedure under the Rules of the Supreme Court (Summons for Directions, etc.), 1954. We conceive that no apology is needed for a continued emphasis on the importance of this first major step along the recommended road of procedural reform. As we have previously reported (*ante*, p. 498), criticism has been made of the fact that the rules do not follow the Evershed Committee's recommendations on the question at what stage of an action the court should assume the close control over the interlocutory proceedings and the parties' preparations for the trial which is now envisaged. There has elapsed a year since the publication of the committee's report, and the Attorney-General has indicated that this period has not been empty of consultation with those who will be in charge of the working of the new Ord. 30. In the result, while the summons for directions is not (except in Admiralty proceedings) to await discovery, and while the proposal for lists or affidavits of documents to be furnished on mere notice has not so far borne fruit, the master is enjoined by the new rules to consider, when the summons first comes to be heard, whether an adjournment of the consideration of some of the matters arising is not expedient. He is, however, to deal forthwith with all such relevant matters as he thinks can conveniently be despatched then and there. The spirit behind the committee's recommendations may, indeed, be said to have been realised in some, at least, of the rules with even more vigour than was contemplated by the suggestion as originally framed. Thus, the report contained a draft rule simply authorising the master to record any admission or agreement relating to a matter in issue or an offer or refusal to make an admission, but the new rules go further by obliging the master to endeavour to secure that the parties make all admissions and agreements which ought reasonably to be made, and provide that he may record any refusal with a view to a special order as to costs at the trial. That the giving of directions has ceased to be but a formality is plain enough from the new scheme of timing. Not seven days as at present, but twenty-one, must elapse between the issue and hearing of the summons, and this interval is to be no empty void, for the respondent to the summons is meanwhile to communicate his notion of the directions which the case requires in so far as he is not content with those asked for by the applicant. And as to some of the costs-saving powers conferred by the rules as amended, such is to be the insistence on their full employment in proper cases that the rules positively require the master to consider their appropriateness *if necessary of his own motion.*

Doctors' Reports

GERMANE to the subject-matter of the new rules, though not explicitly referred to in them, is the agreement of medical reports in personal injuries cases. DENNING, L.J., sitting in the Queen's Bench Division last March, offered some observations on the point when it arose in argument in *Devine* v. *British Transport Commission* [1954] 1 W.L.R. 686; *ante*, p. 287. His lordship indicated that, subject to any special arrangement made at the time, where one party intimated that he would like to see the other's medical reports for the sake of attempting to agree them, there was an implied understanding that the party making the request should in his turn show the other his medical reports. If they were agreed the reports could be used at the trial and the medical men need not be called; if not, the medical witnesses must be called. The order for directions made in the case contained the direction that unless

a medical report were agreed the medical evidence should be limited to two witnesses on each side. Such a restriction on the number of medical or expert witnesses is one of the matters which the master will be expressly bound to consider when the 1954 Rules come into force; but as to the clause about agreement of their reports, Denning, L.J., had this to say: "I would add that there is no legal duty on the parties under this order to attempt to agree. It is a matter for the discretion of their legal advisers. It is to be hoped that, in most cases, they will attempt to agree for the sake of saving costs and the time of the doctors, but, in a serious case, it is often of great help to the court to see the medical men themselves."

Prostitution and Homosexuality

LAWYERS will be glad to see that lawyers have been appointed to serve on the committee of fourteen members to inquire under the chairmanship of Mr. J. F. WOLFENDEN into the laws relating to homosexual offences and prostitution. The lawyers are Mr. KENNETH DIPLOCK, Q.C., Recorder of Oxford, Mr. VICTOR MISHCON, solicitor, and Chairman of the London County Council, and Mr. W. T. WELLS, M.P., member of the Lord Chancellor's Committee on the Practice and Procedure of the Supreme Court and of the Magistrates' Courts' Rules Committee. The predominance of social workers and medical and psychological experts on the committee indicates that notwithstanding the wording of the terms of reference the questions submitted are primarily social and medical. The terms of reference are: "To consider (*a*) the law and practice relating to homosexual offences and the treatment of persons convicted of such offences by the courts; and (*b*) the law and practice relating to offences against the criminal law in connection with prostitution and solicitation for immoral purposes; and to report what changes, if any, are in their opinion desirable." The terms of reference do not restrict the committee to any one aspect, whether social, moral, religious or legal, of its vast subject. From the legal point of view, we submit, the only questions should be, where ought the law to interfere, if at all, and if so can it do so effectively? The composition of the committee seems to ensure that it will not be propelled by pre-conceived ideas, and that the latest results of medical and psychological research will be at its disposal.

Local Government Reform

THE conflict between competing plans for the reform of local government was again recently underlined in a joint memorandum to the Minister of Housing and Local Government, commenting on and criticising the Association of Municipal Corporations, who recommend the all-purpose, one-tier authority as the simplest, most economical, most democratic and best form of local government. The recent memorandum is the joint work of the County Councils Association, the Urban District Councils Association, the Rural District Councils Association, and the National Association of Parish Councils. Their plan involves the continuance of two-tier government in administrative counties and single-tier government elsewhere. The Association of Municipal Corporations are criticised for failing to show that the revolutionary changes they propose are practicable. Contrary to the view that there is an "artificial severance of urban and rural communities," it is stated that "both urban and rural communities have their place in local government as separately organised units in which one is the complement of the other." The urgency of the need for local government reform is heightened by this division of opinion. The Association of Municipal Corporations represent authorities administering 54 per cent. of the population of this country. It would be tragic if a difference of opinion as to the distribution of powers and duties between the authorities concerned were to cause deadlock in the struggle for a solution of a vital problem.

The Fall in Crime

THAT perennially interesting volume "Criminal Statistics for England and Wales" (H.M. Stationery Office, 5s. 6d.) was published this year on 26th August, 1954, for 1953. It contains statistics of offences known to the police and of persons found guilty of offences. While they do not in themselves afford conclusive proof of any trend, nevertheless with the general fall that the figures have shown since 1951, they indicate a falling off in serious crime. Again and even more satisfactorily, the decrease has been greater for children than for adults and particularly for children under 14, although children in the age group 8 to 14 have increased in numbers in the last six years. The total number of indictable offences known to the police in 1953 was 472,989, or 7·9 per cent. lower than in 1952.

"Richard Roe"

MANY readers of the JOURNAL will welcome the news that at long last "Richard Roe" has acceded to the oft-repeated suggestion that a selection of his articles should be re-published in book form. He has now selected and edited some thirty-seven articles which, with illustrations by Robin Hardy, are to be published by the JOURNAL in October. The title—need it be said?—is Richard Roe's own, and what could be more appropriate than "Straws in my Wig"? Most of the articles are from his column "Here and There," but a few are from other sources. The book includes such gems as "Dinner bites Diner," "Candlelight Oath" and "Final Appeal"—in fact, the best of his work in recent years. A number of readers have made requests for a more permanent volume and so, too, have a few readers' wives who must surreptitiously borrow the JOURNAL each week. The price will be 12s. net and publication date will, in due course, be announced in our advertisement columns.

The Javelin Case

MR. JUSTICE SELLERS' recent reference to Antiphon, the Greek lawyer who fought the case of the boy injured at play by a javelin (*Servantes* v. *Clayden*, *The Times*, 31st July), recalls the name of a great lawyer. He was the author of the earliest composed speech ever known to have been spoken in a law court, and yet he never spoke his own speeches, except on the final public occasion of his life, when he spoke in his own defence at the trial at which he was condemned to death for the political offence of having been one of the 400 oligarchs who had seized power. According to Grote, he was exceptionally unlucky, because all except two or three of the oligarchs seem to have escaped both trial and execution. Since then, of course, other lawyers have both failed and succeeded in politics, and his political failure, late in life, was no omen for the political future of the profession which he otherwise adorned. It is curious to reflect that if he remained in the background of litigation, like the modern solicitor, few modern solicitors would go so far in usurping counsel's function as to write out his speeches for him, except that it must be said that instructions to counsel are read and used more frequently than is supposed. It may be that Mr. Justice Sellers' reference to Antiphon, and particularly his quotation of the unsuccessful argument that the boy moved into the path of the javelin, will induce lawyers in the future to include the Greek orators in their libraries. They might do worse.

THE SUMMONS FOR DIRECTIONS

THE Rules of the Supreme Court (Summons for Directions, etc.), 1954, come into operation on 1st October, 1954, and apply to *all* proceedings commenced either before, on or after that date, with the *proviso* that the rules do not apply to any action in which either (*a*) place and mode of trial has been determined before 1st October, 1954, or (*b*) the date for trial has been fixed before 1st October, 1954.

The effect of the new Ord. 30 and the consequential amendments in respect of other orders relating to interlocutory proceedings is substantial. It has widened the scope of the order to be made on a summons for directions and imposes on the court or judge a duty to give directions not only affecting *all* matters mentioned in the new order but also *all other* matters which must or can be dealt with on interlocutory applications and which have not already been dealt with before the hearing of the summons for directions.

The object of the new rules is (*a*) to cut down the number of interlocutory applications and (*b*) as early as possible in the proceedings to give directions relating to evidence and other matters concerning the course and conduct of the action as appears best adapted to secure the just, expeditious and economical disposal of the proceedings (see Ord. 30, r. 1 (1)).

The new rules will place a greater responsibility upon the master or judge dealing with the summons and also upon the solicitors for the parties, in particular the plaintiff's solicitors, or, where there is only a counter-claim in issue, the defendant's solicitors. It will be seen from the provisions of rr. 4 to 6 of Ord. 30 that the court or judge has a roving commission to give directions on matters arising out of pleadings and other documents in the action, and the court or judge can, on the hearing of the summons, call for production of all such documents as the court or judge may reasonably require to enable the summons to be dealt with properly (see r. 6 (1)). There are certain exceptions to the application of r. 1 of the new Ord. 30, and these exceptions are set out in sub-r. (2) of that rule, e.g., Ord. 14 proceedings, actions for accounts, trial of special issues, etc., including actions transferred to the commercial list and to a referee. However, r. 8 of Ord. 14, as amended by the new rules, requires the court or judge, whether leave either conditional or unconditional is given to defend or when leave is given to enter final judgment subject to suspension of execution pending a trial of counter-claim, to give directions as to the further conduct of the action in accordance with the provisions of rr. 2 to 7 of the new Ord. 30, with such necessary modifications as are appropriate in Ord. 14 proceedings, and those rules apply as if the application for judgment was a summons for directions under Ord. 30.

It is, therefore, necessary to consider several matters which have to be borne in mind in dealing with a summons for directions under the new order, and firstly the procedure. The following is a summary as to procedure relating to the summons.

(*a*) The summons for directions must be taken out by the plaintiff within seven days from the time when the pleadings are deemed to be closed, except that in an action where the only question in issue is a counter-claim, the summons must be taken out by the defendant, being the party making a counter-claim. If the plaintiff fails to take out a summons for directions within the time limited, the defendant, or any defendant if more than one, may do so or apply for an order to dismiss the action. As to "close of pleadings," see Ord. 27, r. 13, in which the meaning of the phrase is made clear.

(*b*) On the first hearing of the summons, the court or judge should, if it is possible, deal with all the matters which are required to be considered on the hearing of a summons for directions; alternatively, if it is not possible to deal with all such matters, the court or judge should deal with such matters as can conveniently be dealt with and adjourn the summons for consideration of the remaining matters (e.g., the court may decide that it is convenient to adjourn some of the matters for consideration until after discovery of documents). In Ord. 14 proceedings it is more than likely in most instances, unless the action is transferred to the county court, official referee or commercial list, that directions will, in the first place, be limited to pleadings and discovery, and the summons adjourned for further consideration after completion of discovery.

(*c*) It should be noted that in dealing with a summons for directions *it is the duty* of the court or judge to ensure that all matters which must or can be dealt with on interlocutory applications and which have not already been dealt with, are also dealt with on the summons, or at a resumed hearing of the summons if it is adjourned in accordance with the procedure just mentioned. It is significant to compare rr. 2 and 3 of the new Ord. 30 with r. 2 of the old order. In the old order, the court or judge had a very wide scope as to directions and other matters, but this power was permissive by use of the word "may," whereas the new order is mandatory by use of the word "shall."

(*d*) No order as to the place or mode of trial and no order fixing a date for trial shall be made until *all* the matters which are required to be considered on the hearing of the summons have been dealt with (see r. 2 (4)).

(*e*) It will be seen that there must be a return date of not less than twenty-one days from the date of issue of the summons, and this is to ensure that all parties have the opportunity of considering all the matters which are now required to be dealt with on a summons for directions and so as to enable solicitors or counsel to be briefed sufficiently to deal with these matters on the hearing of the summons.

(*f*) If on the summons for directions the court or judge transfers the action to the county court, then no further order need be made on the summons (r. 5); if on the summons the action or any question or issue thereon is ordered to be tried before a referee, then the court or judge is not required to make any order relating to, or deal with any matter on the summons which can more conveniently be dealt with by the referee (r. 6). Similarly, if it is considered that the action is suitable for trial in the commercial list, the court or judge can adjourn the summons for hearing before the judge in charge of the commercial list, so that it can be treated as a summons to transfer the action to that list.

(*g*) If the summons for directions is adjourned generally without a date being fixed, any party may restore it for hearing on giving two days' notice to the other party.

(*h*) Any party to whom the summons for directions is addressed shall, within fourteen days of the service of the summons, serve on all other parties a notice in writing specifying those orders and directions which he may desire as to any matter capable of being dealt with on an interlocutory application in the action, in so far as they differ from the orders and directions asked for by the summons (see r. 7); and if the hearing of the summons is adjourned any party to the proceedings may apply at the resumed hearing for any order or direction not previously asked for

by the summons or notice under r. 7, by service of not less than seven days' written notice before the resumed hearing of the summons, specifying the further order and directions required.

(*i*) All applications for directions and before judgment as to any matter capable of being dealt with on interlocutory application shall be made under the summons for directions by two days' clear notice to the other parties stating the grounds for the application. It should be noted, however, that if any such application is made which might have been made at the hearing of the original summons, then the court must, if it grants the application, grant it only at the cost of the party applying, unless the court or judge is satisfied that there were sufficient reasons for the application not having been made at the hearing of the original summons (see r. 7). N.B.—Compare rr. 5 and 6 of the old Ord. 30. These provisions are not new, but in as much as the scope of the summons for directions is now much wider, the responsibility on the parties' solicitors to ensure that all matters which might have been raised at the original hearing are raised, is correspondingly greater than before. Furthermore, the opportunity to invoke the penalty as to costs will occur and will no doubt be exercised much more frequently than hitherto.

It will, therefore, be seen that in many cases there will probably be only one summons and one order in actions to which the rule applies, with some saving in costs arising from multiplicity of interlocutory applications. Where the summons is adjourned there will, of course, be subsequent orders if additional directions are given at the resumed hearing. Matters such as amendment of pleadings, if considered necessary, further and better particulars of pleadings and discovery in all its aspects are within the scope of the summons for directions. Each summons is likely to take up much more time in chambers than has been the case hitherto, and the orders on the summons may be very lengthy, especially in complicated cases. Hence the Senior Master's direction that special appointment should be obtained where it is expected the hearing of the summons will take some length of time. There will, of course, be the usual directions as to discovery, inspection, mode of trial, etc.

It may be advisable for solicitors acting for either party in the proceedings to instruct counsel to advise as to directions generally, and experience of the operation of this order may well prove the necessity to place some summonses for directions in counsel's list. In other words, a summons for directions is henceforth not to be a mere formality of procedure, and approach to a summons for directions will require some thought, in as much as a careless approach in dealing with a summons for directions may involve subsequent penalties as to costs. The rules appear to penalise the plaintiff, who has only seven days from close of pleadings to consider the directions which he will require.

No affidavit should be used on the hearing of the summons for directions, except with the leave of the court, but if the summons includes an application for any order which under the rules is normally required to be supported by an affidavit, then no leave is required and the appropriate affidavit should be filed in respect of such matters, e.g., security for costs, applications for further and better discovery, for leave to file further defence or reply (Ord. 24, r. 2).

Dealing with the mode of trial, it will be seen from the provisions of Ord. 36 as now amended that, apart from the commercial list, there are now only three lists in the Queen's Bench Division for trials in Middlesex, namely, the jury list, the non-jury list and the short cause list. The non-jury list is no longer separated into long non-jury and short non-jury, although it will no doubt still be necessary to estimate probable duration of trial for the information of the court associate.

It is not possible within the scope of these notes to deal with, or even summarise, all the matters which may have to be dealt with on a summons for directions, which, apart from the normal matters of discovery, inspection and mode of trial, etc., will depend upon the nature and complexity of the particular case under consideration. In the more simple cases it may well be that no directions other than those hitherto usually made at a summons for directions will be necessary. However, in most cases the directions are bound to be wider in scope than has hitherto been the practice, and the following notes deal with several of the more important matters which are likely to arise for consideration of the practitioner in most cases.

Apart from the usual directions for discovery, inspection and mode of trial, the practitioner may have to apply his mind to the following matters for consideration.

(*a*) *Own pleadings.*—Are my pleadings complete and sufficient or is it necessary to apply for leave to amend or to deliver further defence or reply ?

(*b*) *Opponent's pleadings.*—Do I require further and better particulars of my opponent's pleadings beyond those already requested and delivered (if any) ?

(*c*) Is there any issue which ought to be tried as a preliminary issue, if necessary before discovery, or in order to determine the right to discovery ?

(*d*) Should the court be asked to deal only with certain matters on the first hearing of the summons and adjourn the summons for further consideration until after discovery ?

(*e*) *Evidence Act*, 1938, *s.* 1 (2).—Should directions be requested for admission of statements in documents under this section for the purpose of saving costs ? N.B.—The court, if necessary, can consider this question of its own motion.

(*f*) *Order* 37, *rr.* 1A, *and* 1B, *as amended* (as to mode in which evidence may be given at the trial and the limitation of evidence in certain cases).—Should any of these rules be applied ?

Examples :—

(i) Evidence by affidavit.—Witnesses ill or indisposed or unable to attend the trial for any good reason, witnesses abroad, etc.

(ii) Should evidence of any particular fact be given at the trial in the following manner :—

By statement on oath of information or belief ; production of documents or entries in books ; copies of documents or entries in books ; production of specified newspapers containing statement of fact which is or was a matter of common knowledge either generally or in a particular district.

(*g*) *Expert and medical witnesses.*—Should the number of medical or expert witnesses to be called at the trial be limited ?

(*h*) *Plans, photographs, models.*—In view of the provisions of rr. 1E and 1F of Ord. 37 as now amended, should directions be required authorising plan of *locus in quo* (other than a sketch plan) to be received in evidence at the trial ?

(*i*) *Evidence concerning motor vehicles.*—Is it intended to call at the trial expert evidence of an engineer on account of his skill and knowledge as respects motor vehicles ? If so, copy of engineer's report and substance of his evidence should be available to all parties for inspection before the hearing

of the summons for directions and order obtained on the summons authorising the admission of such evidence. N.B.—This is particularly important in some running-down actions. See Ord. 37, r. 1E (1) (*b*) as now amended.

(*j*) *Admissions* (*Ord.* 30, *r.* 4).—Are there any admissions which my opponent ought reasonably to make to save costs? If so, what are they? Similarly, are there any admissions which I can make for the same purpose without in any way prejudicing my client's case? Admissions in this respect are naturally admissions which do not go to the root of the question in issue. A party cannot be forced to make admissions, but there may be penalties as to costs if a party refuses to make any admission which could reasonably be made by that party, and thereby the other party is put to unnecessary expense in proving certain formal matters. There is, of course, no need to volunteer admissions unless required by the opposing party or by the court or judge. However, the practitioner will have to be prepared to deal with any question of admissions which may arise. This rule may avoid the necessity of incurring costs of notices to admit facts, although it is doubtful whether it will dispense with the necessity of notices to admit documents. In any case the summons for directions precedes discovery. In the case of any refusal to make any admission, the court or judge can cause the order on the summons to record such refusal with a view to such special order, if any, as to costs as may be just being made at the trial.

(*k*) *Limitation of right of appeal.*—The court is not required to secure that the parties shall agree on, include or limit any right of appeal, but the parties can do so, and the order on the summons should record any such agreement.

(*l*) Generally it should be noted that on the hearing of the summons for directions the court or judge can require a party to the action or his solicitor or counsel to give any information or produce any documents, and if the information or production of documents is refused by the party or his solicitor or counsel then the court or judge may cause a note of the refusal to be recorded in the order with a view to such special order (if any) as to costs as may be just being made at the trial. Furthermore, the court or judge on such refusal has power to order the whole or any part of the pleadings of the party concerned to be struck out, or in the case of a plaintiff or claimant under a counter-claim the court can order that the action or counter-claim be dismissed upon such terms as may be just (see r. 6 (3) of the new order). These are very drastic powers, and solicitors and counsel will have to weigh very carefully the advantages of refusing information or production of any documents at the summons for directions against the disadvantages that might arise as to costs and the possible penalty of the action or counter-claim being dismissed, or part of the party's pleadings being struck out. No doubt the court or judge will not use these drastic powers without due warning of the possible consequences of a refusal, and if the consequences become abundantly apparent in the course of the hearing of the summons then the party concerned may be left with no alternative but to comply with the requirements of the court or judge, unless he is prepared to risk his chances on an appeal.

It should be noted, however, that sub-r. (3) does not apply to information or documents which are privileged from disclosure, and the court or judge cannot require such information to be given or such documents to be produced.

R. I. A.

Taxation

THE ESTATE DUTY PROVISIONS OF THE FINANCE ACT, 1954

THE proposals of the Finance Bill, 1954, in the sphere of estate duty were discussed in our issue of 1st May, 1954 (*ante*, p. 292). The Finance Act, 1954, received the Royal Assent on the 30th July, 1954, and accordingly its provisions are effective in relation to deaths occurring on or after that day. In parenthesis one may add that where provisions are said to come into operation "after the commencement of this Act" the question as to the precise time when they become effective is answered by the Interpretation Act, 1889, s. 36 (2), which provides that:—

> "Where an Act passed after the commencement of this Act . . . is expressed to come into operation on a particular day, the same shall be construed as coming into operation immediately on the expiry of the previous day."

So, the Act having received Royal Assent on the 30th July, 1954, it is effective as from midnight the 29th July.

During its passage through the Lower House of Parliament the estate duty provisions in the original Bill were to some extent modified and it is proposed here to consider those modifications, that is to say, to consider the extent to which the final provisions differ from those mentioned at p. 292, *ante*.

Rates

By s. 32 (1) the rates of duty applicable to small estates are varied. The limit of complete exemption is raised from £2,000 to £3,000: the rate applicable to estates exceeding £3,000 but not exceeding £4,000 is reduced from 2 per cent. to 1 per cent.: the rate applicable to estates exceeding £4,000 and not exceeding £5,000 remains at 2 per cent., and no change is made in the rates applicable to estates of a larger value. The reduced rates applicable to agricultural land and now also applicable to certain business assets are, as before, 55 per cent. of the rates which would normally be applied.

"Surviving Spouse" Exemption

It will be recalled that the combined effect of the Finance Acts, 1894, s. 5 (2), 1898, s. 13, and 1914, s. 14 (*a*), is that if estate duty has been paid, since the date of the settlement, on settled property and in respect of the death of one of the parties to a marriage, duty is not payable in respect of the death, during the continuance of the settlement, of the other party to the marriage if he or she has not at any time been competent to dispose of the property. In cases where the second death occurred before the 30th July, 1954, it was essential, with one exception, that estate duty should actually have been paid on the first death: accordingly if no duty was paid on the first death by reason of the estate being under £2,000 in value the exemption was not available on the second death. The one exception was that appearing in the Finance Act, 1952, s. 72, and which applied where no duty was paid on the first death by reason of the "killed in war" provisions.

It is now provided by the Finance Act, 1954, s. 32 (2) and (3) that, in addition to the "killed in war" provisions, the

"surviving spouse" exemption shall be available where the second death occurs on or after 30th July, 1954, if estate duty would have been payable on the first death were it not for the fact that estates of small principal value are exempt from duty. Furthermore, it is provided that payment of estate duty in Northern Ireland in respect of the first death shall suffice to allow the exemption to operate. It is to be noted that so long as the second death occurs after 29th July, 1954, it matters not that the first death was before that date.

Aggregation

The provisions for exemption from aggregation in the case of small estates generally do not seem to have been altered from the original proposals but the special provisions relating to policies of assurance have been considerably varied. It will be remembered that the original proposal was that all policies of assurance on the life of the deceased in which the deceased neither had nor was deemed to have an interest were to form one estate by themselves for the purposes of aggregation. The purpose of the provisions in their final form is, in broad outline, to allow all interests in such policies taken by any one beneficiary to form an estate by themselves.

These provisions have the most unorthodox effects in that the rates of estate duty—hitherto supposed to be a mutation duty—vary in respect of different assets of the deceased's estate, and indeed, in respect of different interests in a single asset of that estate, not by reference to the nature of the assets but by reference to the quantum of benefits taken by different beneficiaries. It appears that we may now have a policy of assurance settled on *A* with remainder to *B* so that the life interest bears duty at a different rate from the reversion.

In examining their effect it is first to be observed that if a policy in which the deceased never had an interest is not chargeable with estate duty at all for any reason other than the fact that estates under £3,000 are free from the impost, then that policy can be disregarded entirely. Thus, if a policy is kept up under a marriage settlement and no beneficial interest arises therein on the death, its existence can be ignored.

Having eliminated such policies it is next necessary to see if it can be said of any policy or policies or of any interest therein that it or they are immediately after the death vested in any one person for his own benefit other than by virtue of a purchase for consideration in money or money's worth. Section 33 (3) provides a method of apportioning the total value of the policy or policy moneys between partial interests therein. The result appears to be that if a policy is settled upon *X* for life with remainder to *Y* then *X* is absolutely and indefeasibly entitled to a life interest therein and *Y* is similarly entitled to an interest in remainder therein. But if a policy is vested in *X* for life upon protective trusts with remainder to *Y* then *Y* but not *X* is absolutely and indefeasibly entitled. It is provided that where any policy or interest therein is immediately after the death subject to a mortgage or charge such mortgage or charge is to be disregarded in valuing the policy or interest. The next step is to consider each individual beneficiary in turn and aggregate together the total value of the policies or interests therein which satisfy the above-mentioned tests. The rate of estate duty payable upon those policies or interests in policies is fixed by reference to that total.

It then appears that the remainder of the policies or interests therein—that is to say, those which cannot be shown to be enjoyed immediately after the death by any one person indefeasibly and for his own benefit other than by purchase—are chargeable at a rate of duty to be found by aggregating together all the policies in which the deceased never had an interest other than those mentioned above in which duty is not payable in any event.

Thus, suppose *A's* estate to be made up as follows :—

(i) General estate—£10,000.
(ii) One policy kept up under a marriage settlement with no beneficial interest therein arising at the death—£5,000.
(iii) One policy written under the Married Women's Property Act, 1882, s. 11, and payable to the widow, *W*, absolutely—£3,000.
(iv) One similar policy settled upon *W* for life with remainder to a son, *P*—£3,000.
(v) One similar policy settled upon *W* for life until remarriage with remainder to *P*—£3,000.
(vi) One similar policy payable to *P* and *Q*, a daughter, equally—£3,000.
(vii) One policy exactly similar to the last except that *P* has purchased from *Q* her interest therein—£3,000.

Assume that *W's* life interest in (iv) is worth £1,000 and in (v) is worth £500.

On the death of *A* before 30th July, 1954, estate duty would be payable as under :—

		£
(i)	£10,000 at 4 per cent.	400
(ii)	£5,000 at nil	—
(iii)	£3,000 at 1 per cent.	30
(iv)	£3,000 at 1 per cent.	30
(v)	£3,000 at 1 per cent.	30
(vi)	£3,000 at 1 per cent.	30
(vii)	£3,000 at 1 per cent.	30
		£550

On the death of *A* after 29th July, 1954, it is first necessary to examine each of items (iii) to (vii) to see in what category the respective interests fall :—

		£
(iii)	*W* absolutely entitled not by purchase to	3,000
(iv)	*W* absolutely entitled not by purchase to	1,000
	P absolutely entitled not by purchase to	2,000
(v)	*W* absolutely entitled	—
	W entitled but not indefeasibly	500
	P absolutely entitled not by purchase	2,500
(vi)	*P* absolutely entitled not by purchase	1,500
	Q absolutely entitled not by purchase	1,500
(vii)	*P* absolutely entitled not by purchase	1,500
	P absolutely entitled but by purchase	1,500
		£15,000

It is then necessary to aggregate in the case of each beneficiary the interests to which he or she is absolutely and indefeasibly entitled not by purchase :—

			£	
W	Under	(iii)	3,000	
		(iv)	1,000	
	Total		£4,000	Rate—1 per cent.
			£	
P	Under	(iv)	2,000	
		(v)	2,500	
		(vi)	1,500	
		(vii)	1,500	
			£7,500	Rate—3 per cent.
Q	Under	(vi)	£1,500	Rate—Nil.

One then ascertains the value of the interests not included above :—

			£
W	Under	(v)	500
P	Under	(vii)	1,500
			£2,000

These will bear duty at the rate found by aggregating the whole value of (iii) to (vii)—that is 5 × £3,000 = £15,000. Rate 8 per cent.

The duty actually payable is :—

		£
(i)	£10,000 at 4 per cent.	400
(ii)	£5,000 at nil	—
(iii)	£3,000 at 1 per cent.	30
(iv)	£1,000 at 1 per cent.	10
	£2,000 at 3 per cent.	60
(v)	£500 at 8 per cent.	40
	£2,500 at 3 per cent.	75
(vi)	£1,500 at 3 per cent.	45
	£1,500 at nil	—
(vii)	£1,500 at 3 per cent.	45
	£1,500 at 8 per cent.	120
	£30,000	£825

Industrial Premises, Plant, etc.

In the review of the original provisions of the Finance Bill it was stated that the relief for industrial premises, plant, etc., would, unlike the existing relief for agricultural property, apply whether or not the terms of the partnership were such that the relevant assets would devolve in specie between the partners. As a result of correspondence with a reader of that original review and as a result of further consideration of the provisions it seems that there is considerable doubt whether that is so and it seems that the Crown may well contend that the relief has no application to partnership assets where the partnership agreement is in common form. It is rather extraordinary that this should be so, particularly in view of the provisions whereby the relief is available in respect of an aliquot part of the value of shares in limited companies when those shares fall to be valued under the provisions of the Finance Act, 1940, s. 55. However that may be there is no equity in a taxing statute and practitioners would do well to remember that, in the case of partnerships, the provisions of s. 28 may be a trap for the innocent.

G. B. G.

A Conveyancer's Diary

DISCHARGE OR MODIFICATION OF RESTRICTIVE COVENANTS—I

UNDER THE HOUSING ACTS

A CONSIDERABLE amount of building is now being done on wholly private account in this country, and there are signs of an acute shortage of suitable sites in some areas. With the basic principles of planning control as imposed since the war accepted by the principal political parties, this shortage is likely to become more pronounced as time goes on. One result must be that builders are likely to find it more and more difficult to obtain sites for development which are wholly free of restrictions. That is one reason for a reviving interest in the question how restrictive covenants affecting land, freehold or leasehold, can be discharged or modified so as to permit of an economic use of the land in the light of the circumstances of to-day. Another, and similar, problem confronts the owner of a large house which is subject to a restriction that the premises should not be used otherwise than as a single house for private residential occupation, and which nobody has either the desire or the means to occupy in this manner. Many houses of this kind were requisitioned either during the late war or just afterwards and are only now being derequisitioned, so that the problem of converting them to some more readily acceptable use is an immediate and urgent one, and one of the first questions which has to be dealt with is the restrictive covenants to which the house in question is subject.

Apart from a private arrangement between all the persons interested, which is often difficult to reach because it is not always easy to ascertain who those persons are, there are three methods by which restrictive covenants affecting land can be varied, discharged or modified. The first is by application under the Housing Acts to the county court. This is a limited jurisdiction, not much invoked in practice, and only to be recommended in very simple cases. The second is by application to the Chancery Division under s. 84 (2) of the Law of Property Act, 1925, for a declaration whether or not in the particular case the land is affected by a restriction, and if so what the nature and extent of the restriction is. Where this jurisdiction can be invoked, and as will be seen it is only in certain circumstances that in practice an application of this kind can be made with any real chance of success, this is the neatest and least expensive method, for if the land is declared not to be affected by the restriction under consideration that is an end of the matter and no question of compensation can arise. Moreover, if an application under s. 84 (2) is resisted without reasonable grounds, the recalcitrant respondent may be ordered to pay the applicant's costs. The last method is by application to the Lands Tribunal under s. 84 (1) of the Law of Property Act, 1925, for an order discharging or modifying the restriction. An application under this provision is made on the assumption, which is by no means always justified by the facts but which it is often impossible to displace on the information which is available or may at reasonable cost be made available, that the restriction is a binding restriction and that there are persons who would enforce it against the applicant. That being so, an order under this provision is to some extent a matter of grace, and may be made subject to the payment of compensation to those affected by the relaxation which the order will effect.

As I have suggested, this topic is of sufficient importance at the present time to be dealt with at some length, and I propose, therefore, to devote three articles to the three possible methods which I have mentioned, starting to-day with the jurisdiction under the Housing Acts.

Section 163 of the Housing Act, 1936, originally provided that where it is proved to the satisfaction of the county court on an application by the local authority or any person interested in a house that (*a*) owing to changes in the character of the neighbourhood in which the house is situate the house cannot readily be let as a single tenement but could readily be let for occupation if converted into two or more tenements, and (*b*) by reason of the provisions of the lease of the house, or any restrictive covenant affecting the house, or otherwise, such conversion is prohibited or restricted, the court may vary the terms of the lease or other instrument imposing the prohibition or restriction so as to enable the house to be converted, subject to such conditions and upon such terms as the court may think just. This provision was extended by s. 11 of the Housing Act, 1949, which provides that this power

to vary the terms of a lease or other instrument shall be exercisable in any case where planning permission has been granted under the Town and Country Planning Act, 1947, for the use as two or more separate dwelling-houses of a building previously used as a single dwelling-house in the same way as the power conferred by the earlier Act is exercisable thereunder. But even as it has been extended, this power is strictly limited to a single type of restrictive covenant, a covenant not to use a house other than as a single house and not to convert it structurally for any other use than the covenanted use. It is, moreover, not quite clear whether a person who wishes to convert a single house into flats and then sell the flats, an operation which despite the warnings of conveyancers is becoming increasingly popular both with developers of property and the public, can properly make an application under these sections, which refer to the difficulty or impossibility of letting the premises in an unconverted state as a condition of the exercise of this jurisdiction. As this condition is imposed, it may be that once the requisite proof of the difficulty or impossibility, as the case may be, has been given, the court may as a matter of the strict construction of these sections accede to the application even if the object of the applicant is not to let the premises, when converted, as two or more tenements, and that object is known to the court; but even if an applicant in these circumstances could satisfy the court that he is within the letter of these provisions, he would not be within their spirit, and as the jurisdiction is a discretionary one it is probably safer to regard it as a jurisdiction only to be invoked where the ultimate purpose is to convert the house into two or more tenements for letting as such. In other cases it will often be just as convenient and no more expensive to apply to the Lands Tribunal, whose statutory jurisdiction is expressed in much wider terms.

Otherwise there are no limits on this county court jurisdiction. Even before the Housing Act, 1949, removed all references to the working classes and the housing of the working classes from the various Housing Acts, and made that legislation applicable to all classes of the population, the operation of s. 163 of the 1936 Act (which was a re-enactment of a provision which was first put on the statute book in 1919) was not confined to premises which, if converted, could be let for occupation by persons of the working classes (*Johnston* v. *Maconochie* [1921] 1 K.B. 239), and the ordinary limits of value of the premises imposed on the jurisdiction of the county court have no application to these provisions. The provisions expressly apply to leasehold as well as to freehold property, and in regard to the former the provisions contain no such qualification as appears in the Law of Property Act, 1925, in this respect.

An application under these provisions will be made to the county court by originating application, which, under the rules, must state the order applied for and sufficient particulars to show the grounds on which the applicant claims to be entitled to the order and the names and addresses of the persons intended to be served. As the kind of order which may be obtained under these provisions is strictly limited, no difficulty can arise in stating it, and where the premises are leasehold the only person whom it will normally be necessary to serve will be the lessor (it is, of course, possible for persons other than the lessor to be interested in a restriction affecting leasehold land, e.g., under a leasehold building scheme such as in *Kelly* v. *Battershell* [1949] 2 All E.R. 830, but that is rare); no difficulty is, therefore, likely to arise in regard to the last part of this requirement. As to the statement of the grounds for the application, if these are those mentioned in s. 11 of the 1949 Act, viz., that planning permission for use as two or more separate dwelling-houses has been granted, this again will present no difficulty, and this is the kind of case, the very simple case, which is probably most suitable for hearing by a county court. It may, of course, also be easy in a given case to show that the restriction has become out of date by reason of changes in the character of the neighbourhood, and in that event this jurisdiction could also suitably be invoked. But where there is likely to be some dispute about this and the evidence of experts is necessary, there is really nothing to recommend the jurisdiction of the county court, to which applications of this kind are rare if not entirely novel, as being superior to that of the Lands Tribunal, which has constant experience of this kind of problem. In a disputed application to vary, discharge or modify a restriction on the ground of changes in the character of the neighbourhood, the most considerable expense will usually be that of providing the expert evidence concerning the changes relied upon of an estate agent or surveyor with long and intimate local knowledge of the neighbourhood. This expense will be largely the same whatever the court or tribunal which will hear it. Finally, the Lands Tribunal sits in all parts of the country, as required. Taking all these matters into account, the tribunal has advantages over the county court in these matters which are not, as far as I can see, counterbalanced by any considerable disadvantages, of expense or otherwise, except in the very simple case where the opposition is likely to be non-existent or ineffective.

"A B C"

Landlord and Tenant Notebook

THE LANDLORD AND TENANT ACT, 1954—I

"LONG TENANCIES AT LOW RENTS"

PART I of the Landlord and Tenant Act, 1954, which comes into force on 1st October next, is concerned exclusively with tenancies of dwelling-houses which would have been protected by the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939, but for the exclusion provided for by s. 12 (7) of the first of those Acts (rent payable less than two-thirds of rateable value) and which were granted for a term of years exceeding twenty-one years. Tenants of such, and their sub-tenants (it is, indeed, the decision which showed that a sub-tenant, whatever rent he might pay, was left exposed to the rigours of the common law if the low-rent term or ground lease held by his immediate landlord expired—*Knightsbridge Estates Trust, Ltd.* v. *Deeley* [1950] 2 K.B. 228 (C.A.)—which has occasioned this change), are given protection which, while in the main similar in character to that of ordinary Rent Act protection, has a number of distinctive features.

There must, then, have been a grant "for a term of years certain exceeding twenty-one years, whether or not subsequently extended by act of the parties or by any enactment" (s. 1 (4)): the last words presumably allude to extensions created by the Leasehold Property (Temporary Provisions) Act, 1951, s. 1, which made "temporary provision for the protection of occupiers of residential property against the coming to an end of long leases." And the rent payable—in the case of a progressive rent, the maximum figure—must

be less than two-thirds of the rateable value; the latter, in the case of "old control" properties, being the rateable value on 3rd August, 1914, in the case of "new control" properties that value on 1st April, 1939 (outside London) or 6th April, 1949 (London); in either case, if the property was not then assessed, at the date when it was first assessed.

A tenancy satisfying the duration condition is called a "long tenancy" (s. 2 (4)); when the rent condition is satisfied, we have a "tenancy at a low rent" (s. 2 (5)); and Pt. I of the Act applies to "any long tenancy at a low rent," subject only to what is called "the qualifying condition," i.e., provided that the "circumstances" (as to the property, its use, etc.) are such that it would be protected but for its "low rent" (s. 2 (1)).

Ordinary Rent Act protection comes into being when the tenant "retains possession" by virtue of the provisions (Increase of Rent, etc. (Restrictions) Act, 1920, s. 15 (1)) and "no order or judgment for the recovery of possession shall be made or given unless, etc." (Rent, etc., Restrictions (Amendment) Act, 1933, s. 3 (1)); but Pt. I of the 1954 Act provides for two changes of relationship. When the original tenancy terminates (the date of expiry is known as the "term date" (s. 2 (6)) and, if there should have been a holding over by consent—provided for by s. 19—the "term date" is the first date after the commencement of the Act on which the tenancy could have been brought to an end by a landlord's notice to quit: (Sched. IV, para. (2)), the tenancy just "continues" and does so at the same rent or, if only part of the demised property qualifies for protection, at an apportioned rent (which may be agreed) (s. 3).

This state of affairs is, of course, not meant to last long. The tenant can terminate it at or after the term date itself by giving a month's notice in writing (s. 5); but what is more likely to happen is that the landlord gives one of two notices, in the prescribed form, provided for in s. 4: either a "landlord's notice to resume possession" or a "landlord's notice proposing a statutory tenancy." Either must be given between twelve and six months before the date on which the landlord intends the temporary relationship to come to an end, called "the date of termination" (s. 4 (1)).

Prescribed forms for (*inter alia*) notices under s. 4 are to be found in the Landlord and Tenant (Notices) Regulations, 1954 (S.I. 1954 No. 1107).

A notice to resume possession must tell the tenant that unless he complies the landlord will apply to the court for possession on one or more of the recognised grounds, specifying it or them. These are, roughly, the same as the existing grounds applicable to ordinary statutory tenancies (to be found in the Rent, etc., Restrictions (Amendment) Act, 1933, s. 3 (1) and Sched. I), plus proposed demolition or reconstruction for purposes of redevelopment (s. 4 (3) (*b*); s. 12; Sched. III).

A notice proposing a statutory tenancy must specify premises, standard rent, any initial repairs to be done, and if so, by whom, and any obligations as respects repair during the coming statutory tenancy (s. 4 (3) (*a*); s. 7 (2) (3)). "Repairs," it may be mentioned here, includes, according to the general interpretation section relating to the whole of the Act, any work of maintenance, *decoration* or restoration (s. 69 (1)). The scheme of the legislation is that the parties should negotiate and agree the points and terms, and that only if negotiations fail is the court to be called upon to settle the difference. Thus, the notice proposing the statutory tenancy ceases to have effect if, by the beginning of the last two months of its currency, one of two things has not happened: either the parties have agreed the terms, or application has been made to the court to determine them. In negotiating, parties will of course be guided or influenced by the provisions laying down principles which a court is to observe when it is called upon.

As regards rent, those expecting to find the adjective "reasonable" will not be disappointed; but the particular provision is more elaborate than is usual, the court being directed to have regard to the present state of repair, the state of repair to be expected after the initial repairs (if any) have been carried out, and the terms governing future repair; and to ignore the personal circumstances of the parties (s. 9 (5)). It follows that the question of repairs, which does not figure in the incidents of any ordinary statutory tenancy (". . . the terms and conditions of the original contract of tenancy": Increase of Rent, etc. (Restrictions) Act, 1920, s. 15 (1)), is a very important consideration in statutory tenancies under the Landlord and Tenant Act, 1954.

For, reverting to the landlord's notice proposing a statutory tenancy and going into the matter of repairs in greater detail, it has to deal with three points: (i) whether any, and if so what, initial repairs are to be carried out; (ii) if any, who is to carry out which; and (iii) future maintenance (s. 8 (4)).

"Initial repairs" are simply "specified" repairs (s. 21 (1); s. 8 (1)), and if neither landlord nor tenant thinks that any are needed, the first two points need cause no worry. But if any such are "required" in consequence of the tenant having failed to fulfil his obligations under the former tenancy, the landlord is to be entitled to a "payment for accrued tenant's repairs," consisting of the reasonable cost of ascertaining what repairs are required and that of effecting them, but less anything recoverable by the landlord otherwise than from the tenant or his predecessor in title (s. 8 (1)). When there is to be such a payment, it may be a lump sum payment or may be made payable by instalments (s. 8 (2)). Lump sum payments are due when the work has been done; instalments as agreed or directed (Sched. I). But a *tenant* cannot be placed by the court under an obligation to effect initial repairs without his consent (s. 9 (2)).

Failure on the part of the landlord to carry out initial repairs for which he is responsible, either by agreement or by the court's determination, is dealt with by reduction of rent and suspension of instalments (if so payable); if the tenant omits to carry out corresponding obligations, the omission counts as a breach of an obligation of the tenancy under the Rent, etc., Restrictions (Amendment) Act, 1933, Sched. I (*a*), i.e., becomes a ground for possession (1954 Act, Sched. II).

As to future repairs, it is somewhat astonishing that s. 8 (4) (*d*) speaks of "whether there are to be any, and if so what, obligations . . . during the period of the statutory tenancy": one would have thought that this Act and the Housing Repairs and Rents Act showed that Parliament realised that houses wear out. When there is no agreement and the court has to settle the question, it is directed that such obligations as it imposes "shall not be such as to require the dwelling-house to be kept in a better state of repair than the state which may be expected to subsist after the completion of any initial repairs to be carried out," or, if none is to be so carried out, than the state subsisting at the time of the determination.

Provision is made for extinguishing any past liability incurred by a tenant retaining possession, except as regards rent, rates, insurance, or immoral or illegal user (s. 10).

R. B.

HERE AND THERE

DRUNK IN CHARGE

THE game of finding, or by deft *suppressio veri* manufacturing, historical parallels for our social, economic and moral problems, tends to give us a reassuring feeling that we're only tackling old problems in a new form, as a man accustomed to cats might hopefully try to cajole a puma which he found in his back garden. There is accordingly a strange and paradoxically fresh tang of novelty in meeting an old problem in an old form. The police have long been worried at the persistence with which persons in a state of exhilarated drunkenness put themselves in charge of movable structures of assorted sizes varying between the dimensions of a piano and a cottage and capable of speeds exceeding that of a cannon ball. I suppose the resulting problem of the peril of their progress along the public highway is just the age-old problem of drunkenness in a new form, though in this case it is very heavily disguised. How heavy is the disguise one only realises when suddenly one comes face to face, as one did the other day, with the problem in a far more elementary form, the form of a man charged with being " in a state of intoxication while in charge of a horse and carriage." When one adds that the occupants of the carriage were a Lord of Appeal in Ordinary and his lady, even the driver's breath assumes a quality somewhat approaching that of an old-world fragrance, altogether different from anything that one associates with the reek of the infernal combustion engine. The self-deified god in the machine, boxed in from direct contact with humanity and the elements, is swallowed up in a thing more akin to the monstrosities of the sad mad world of the insects than any man-made object the earth has yet seen ; it looks, it moves, it sounds like an insect. There hardly seems any analogy between that and the ancient partnership of man and horse, a partnership in which it is often doubtful which partner is really in charge of the other. Both are capable of independent intelligent action in an emergency and one at least is almost invariably a teetotaller. By even a slight degree of alcoholic exhilaration the lonely man in a car may be ditched and done for in a matter of minutes, while the far more profoundly convivial figures of Tony Weller and his like ride home regally ripe, not only *securi* but *tuti*, behind the noble sobriety of the horse.

CARRIAGE IN SARK

IT is a pity that the horse and carriage case did not actually occur in England to add a touch of variety to the year's criminal statistics, since being drunk in charge of a horse and carriage, no matter how innocuously, ranks apparently as a crime and not a joke. But it happened near enough for one to be able without too much difficulty to visit the place and make the acquaintance of the parties principally concerned, the man and the horse. It was in Sark, that island of feudalism, fancifully floating between the French Republic and the British Welfare State, where a paternal or rather, since the ruler of the domain is the Dame of Sark, a matriarchal jurisdiction is exercised in the Court of the Seneschal. This was the story that was told to the court, and if an imaginative French film producer happens to notice it we may well, one of these days, be delighted with some little masterpiece called " Les Vacances du Milord Oaksey." Resting from his labours as a Lord of Appeal and a member of the Judicial Committee of the Privy Council, his lordship was paying a visit to the lady of the island. Came the moment when they must depart, taking the rocky road to the harbour and to the ship and, since the lethal conveniences of progressive transport have not been accepted as an integral part of Sark's way of life and death, a horse and carriage was sent for and duly arrived, but at that point the evidence presented in the Seneschal's Court branches into two divergent stories.

TWO SIDES

THE version of the defence suggests a vision of a serious, steady coachman worthy of the procession of the Lord Mayor of London himself. The prosecution's picture was rather that of a Bacchanalian Jehu whose driving brought apprehensively to mind the uncertain courses of the gentleman who made the rolling English road in Chesterton's poem. The Dame in her evidence said that she thought he was not fit to drive her guests to the boat. They were very nervous about it, but as it was already late she allowed him to take them. Now the allegation of nervousness is somewhat hard to credit so far as Lord Oaksey is concerned. Not only is he pre-eminently solid and sensible, but he is also a countryman by tradition and taste. He knows all about horses and few are likely to forget the memorable victory of his " Lohengrin " in the Bar Point to Point a few years ago. Had the occasion demanded it he would have been perfectly well qualified to reach an understanding with the Sark carriage horse (in the international language of man and horse which does not require the intervention of Norman French) and to take over the reins himself had any emergency arisen. In fact the harbour was safely reached, but the court, finding the driver guilty of the offence charged, imposed a fine of 10s. and, what was more inconvenient to a sociably minded defendant, put him on a black list which would exclude him from the island's seven bars for a period of half a year, a version unknown in English penal methods of punishment without bars. The defendant is appealing. So there the matter rests.

RICHARD ROE.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL*]*

Repairs Increases

Sir,—It appears to me that your contributor " R. B. " in his first article on the Housing Repairs and Rents Acts, 1954, appearing at p. 552 in the issue of 14th August last is not quite correct in his interpretation of the first of the exceptions set out in s. 23 (3) of the Act. In my reading of the exception it refers to all new control tenancies.

The exception reads as follows :—

" (3) The foregoing provisions of this section shall not apply if—

(*a*) the standard rent of the dwelling-house is such as is mentioned in paragraph (*a*) or (*b*) of subsection (1) of section one of the Act of 1949 (which relates to standard rents fixed by reference to lettings beginning after the first day of September 1939)."

The words in brackets here seem to me to indicate, by way of explanation, that the exception relates to all new control tenancies. No mention is made of determinations by tribunals and all we are required to read of the 1949 Act is paras. (*a*) and (*b*) of s. 1 (1).

The appropriate part of the Act of 1949 reads :—

" 1.—(1) Where apart from this section the standard rent of a dwelling-house would be—

(*a*) the rent at which it was let on a letting beginning after the first day of September 1939, or

(*b*) an amount ascertainable by apportionment of the rent at which a property of which it formed part was let on such a letting as aforesaid (whether such an apportionment has been made or not)."

These words do not provide for any determination of standard rents by tribunal. This provision follows immediately after the end of para. (*b*).

My view appears to be supported by the Ministry of Housing and Local Government pamphlet "The New Act—Repairs and Rents" which sets out in question and answer form the effect of the 1954 Act on rents. Question 26 at p. 11 of the pamphlet is "Are all houses within the Rent Restrictions Acts liable to a repairs increase?" and the answer given is "Most of them. But where a house had never been let until *after* the 1st September, 1939, there can be no repairs increase and no increase in respect of the increased cost of providing services." This reply is a simplification of s. 23 (3) (*a*) and s. 40 which permits increases for services in certain circumstances in respect of pre-1939 lettings.

It would be illogical to accept "R. B.'s" interpretation of the exception, for then a landlord of a new control house would, unless his rent had been determined by a rent tribunal, be entitled to a repairs increase but not to an increase in respect of any services he provided, but we are, of course, accustomed to being bewildered by the Rent Acts and this latest piece of legislation in no way simplifies the Acts.

In the second article of the series the period for the work of repairs is not quite correctly stated. The second schedule provides that the normal period is: "such period of twelve months as may be specified in the declaration, being a period falling *within* the fourteen months ending with the date of service of the notice of increase . . ." Thus, the work of repair has to be carried out within a period of twelve months so that it may be carried out in months 1 to 12, 2 to 13 or 3 to 14, but not extended over the whole fourteen-month period.

J. R. FRANKISH.

Scarborough.

R. B. writes:—

"On reflection, I consider that there is more to be said for the interpretation of s. 23 (3) contended for by your correspondent than against it. At the same time, I would point out that (i) while the Landlord and Tenant (Rent Control) Act, 1949, "mentions" a rent and an amount, they are so mentioned as constituting what *would be* the standard rent; (ii) despite the passion for "legislation by reference," the new Act could have said what it is said to mean quite shortly, without such descriptive phraseology, if that is what it did mean; and (iii) as far as logic is concerned (*a*) new control is not limited to dwellings first let after 1st September, 1939, and (*b*) the underlying idea, it could be suggested, is that tribunals could be trusted to take landlords' liability for repairs into account when "determining what rent is reasonable," and the landlord must not be allowed to have the same thing twice.

I agree that in my second article the 'within such period of twelve months' qualification should have been included in the passage referred to."

Legal Advice

Sir,—May I say how whole-heartedly I agree with the ideas put forward in the article on this subject in your last issue [see p. 565, *ante*]. I am sure that a very high proportion of solicitors would be only too glad to take part in the scheme which your contributor visualises. At the present time many of them are giving such advice every day in their own offices for purely nominal fees.

It is quite possible that in large centres of population the elaborate system proposed by the Rushcliffe Report would be suitable, but, as your article states, there would be grave disadvantages to such a scheme if it were put into operation in country districts. Firstly, one feels that only newly qualified solicitors who could not obtain better employment would be prepared to accept a post which would entail bus or rail travel from town to town for daily or half-daily visits. Secondly, people in want of legal advice generally want it as speedily as possible, and would not be prepared to wait a week or possibly a fortnight in some cases for a visit from the touring solicitor.

Thirdly, there can be no doubt that the local link between the solicitor and people in the district in which he lives is an important and valuable one, which should be maintained if it is anyhow possible. Fourthly, the very necessary restrictions to be imposed on the solicitor giving advice by the terms of the Rushcliffe Report, e.g., the fact that he will not be allowed to write a letter, would be bound to create many difficulties which would not exist if the scheme your article proposes were put into operation.

I do hope that some steps are taken to bring your article to the notice of The Law Society, as I am sure it represents the views of a very high proportion of the profession.

R. D. BIRCH.

Lichfield, Staffs.

TALKING "SHOP"

OLD CRUSTY RUMBOLD'S LETTERS TO HIS SON—IV

My dear Richard,

If you have seven good reasons for not doing a thing, just pause and ask yourself whether the seven are not too good to be true. It may be that you will find seven other reasons for doing it; and though these may at first resemble the ill-favoured and lean-fleshed kine of Pharaoh's dream, you will remember that it was they that ate up the seven well-favoured and fat kine. I mention this in passing, because I have seven or more adequate reasons for *not* writing to you about your attitude towards clients and clients' business; and of these it is the most obvious that you are unlikely, at present or for some years to come, to be personally advising clients yourself. But all these reasons yield to others, and notably that whatever you are about—unless it happens to be arranging fixtures for the office cricket eleven—you will be about the business of one client or another, directly or indirectly. You cannot, therefore, begin too early to decide for yourself what is to be the nature of the relationship between yourself and your client, and to mould your thoughts and actions accordingly.

It is only fair to say that you will not learn how to humour a client from text-books nor from this or any other letter that I may write to you. But I can make some suggestions of a general kind so that you may cultivate your garden as advised by Voltaire and, perhaps, contrive to eschew the grosser errors.

I do not consciously recall very much of what I learnt under articles, but I do remember that one day old Venables—then and at all times senior partner, for he built up the practice himself—remarked that his job as a solicitor was "driving pigs to market." It was a great many years before I properly understood what he meant; and though, personally, I think he was going a little too far with this comparison, I must allow that there was some justice in it. I should prefer to say that the rôle of the solicitor is that of a sheep dog, and as a general rule, if he is a young dog, he will go dashing around from one place to another and will seem to be getting along much faster than some of the old dogs; but sooner or later he is apt to muss the whole thing up. If you want to keep your sheep steadily on the move and in the right direction, it is a good plan to economise effort and plan ahead. If you go running circles round them and then dashing in suddenly with a big "woof" or even a sharp nip by way of a caution to keep their wool on, the chances are that you will finish up with them all over the course, jumping stone walls and getting caught up in the barbed wire. And I wouldn't be sure that now and again an old ram might not put his head down and butt you in the ribs just to mend your methods.

Some solicitors act in a manner that consists with a reversal of these rôles, that is as sheep, with their clients as sheep dogs. This, I think, is due sometimes to inexperience, particularly in young solicitors, but more often to a natural anxiety to keep on good terms with the client; the tendency is very marked in small practices where the loss of a valuable client may be disastrous; it is also observable in large practices where the client is important enough or the solicitor is pusillanimous enough; it is more or less endemic. Another cause of the phenomenon is bone idleness on the part of the solicitor. Another is a strong and dominant personality in the client. I would not weary you with a list of all the causes even if I knew them. I need only impress upon you that *it is your business to advise your client;* however much you may learn from him, it is not his business to advise you.

It has often struck me as odd that you will hear someone say that he is "under doctor's orders," but you will never hear him say that he is "under solicitor's orders." It is time we caught up with the medical profession, but we have a long way to go before we do. Perhaps, after all, it is an indirect compliment to our calling and a tribute to our tact in camouflaging orders as advice, and advice as the client's own intuition—but I doubt it. Too often, I fear, the hand in the velvet glove is all moist putty and a limp and horrid thing to shake.

It consorts with what I have said concerning the dominant client and the servient solicitor (I suppose that by now you have read as far as easements) that far too many letters are written simply asking for "instructions." I must not say that we instruct clients, but I think we get quite as near and as often to instructing them as they ever get to instructing us. They instruct us, if you like, in the facts and their wishes, we try to instruct them in the law and other worldly matters. But it is at best a most unfortunate word and its implications are, in my view, much at variance with the true solicitor-client relationship.

The word is obnoxious because it implies that we have done our duty by our clients when we have sought, learnt and executed their bidding. The point is that we are, or we ought to be, part of the destiny that shapes their ends, rough-hew them how they will. For my part, if only in the cause of the weaker brethren, I would utterly scotch, erase and liquidate the word "instructions," except where it naturally belongs, and that is in a bill of costs, for preference with a four-figure fee after it.

I hope you may be reading between the lines of this letter as recommended in my first; but in any case your common sense will tell you not to go to the other extreme of adopting towards your clients an attitude that is hostile, arrogant, cantankerous or supercilious. It is true that Soames Forsyte's "slight superciliousness . . . combined with an air of mousing amongst precedents"(1) is supposed to have impressed his clients favourably; but, being a "warm man" financially and a rather cold one by temperament, he could afford to indulge the defects of his qualities. Until you are so well established that you can indulge your own in that way it is best to stick to orthodoxy. Of course, you may in time establish yourself so firmly that your eccentricities take on the nature of an orthodoxy all their own, so that when you act in character people will be delighted and say, "Isn't that just like old so-and-so?" and will expect a discount if your performance is not up to the standard billed outside the box office. In the meantime, however, you don't want your clients telling each other that the discount should be made just the same—but by way of danger-money for consulting you.

I fear that I may confuse you if I follow the metaphor of the sheep dog with that of a shepherd, but I will risk it. I said that you would learn nothing to the purpose from text-books, but I do not rank the *Canterbury Tales* as a text-book, and Geoffrey Chaucer as usual says succinctly in verse much that is to the point of this subject. He was writing of the "poore Parson of a town," but no matter; it may stand for a solicitor:—

"He sette not his benefice to hire
And let his sheep accumbred in the mire . . . .
But dwelt at home, and kepte well his fold,
So that the wolf ne made it not miscarry.
He was a shepherd, and no mercenary . . . .
He was to sinful men not dispitous(2)
Ne of his speeche dangerous ne dign,(3)
But in his teaching discreet and benign.
To drawen folk to heaven with faireness,
By good ensample, was his business:
But it were(4) any person obstinate,
What so he were of high, or low estate,
Him would he snibben(5) sharply for the nones(6) . . . .
He waited after no pomp ne reverence,
Ne maked him no spiced(7) conscience . . . ."

It would be a crime to gild the lily of such a text, so I will leave the matter there, at least for the present.

Your affectionate father,

Crust Rumbold.

"ESCROW"

(1) See also 98, SOL. J. 71.
(2) Severe.
(3) Disdainful.
(4) But were it.
(5) Reprove.
(6) Occasion.
(7) Nice.

BOOKS RECEIVED

The Principles of Company Law. Sixth Edition. By His Honour Judge J. CHARLESWORTH, LL.D. 1954. pp. xxxv and (with Index) 388. London: Stevens & Sons, Ltd. 17s. 6d. net.

New Zealand. The Development of its Laws and Constitution. Under the General Editorship of J. L. ROBSON, LL.M., Ph.D., with Specialist Contributors. 1954. pp. xix and (with Index) 384. London: Stevens & Sons, Ltd. £2 10s. net.

Death Duty Scales. Seventh Impression, August, 1954. pp. 6. London: The Solicitors' Law Stationery Society, Ltd. 1s. 6d. net.

"Current Law" Income Tax Acts Service [Clitas]. Release 20. 1954. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd. Edinburgh: W. Green & Son, Ltd.

The Law of Stamp Duties. By J. G. MONROE, B.A., of the Middle Temple and Lincoln's Inn, Barrister-at-Law. 1954. pp. xx and (with Index) 180. London: Sweet & Maxwell, Ltd. £1 5s. net.

The Principles of Modern Company Law. By L. C. B. GOWER, LL.M. (Lond.), Solicitor of the Supreme Court, Sir Ernest Cassel Professor of Commercial Law in the University of London. 1954. pp. xl and (with Index) 599. London: Stevens & Sons, Ltd. £2 5s. net.

The Housing Repairs and Rents Act, 1954 and Supplement. By G. AVGHERINOS, B.A., of the Middle Temple, Barrister-at-Law and A. E. TELLING, M.A., of the Inner Temple, Barrister-at-Law. 1954. pp. xi and (with Index) 158; (Supplement) 47. London: The Estates Gazette, Ltd. 15s. 6d. net.

REVIEWS

Special Reasons. Second Edition. By W. E. BLAKE CARN, Solicitor, Clerk to the Justices for the City of Leicester. 1954. London: Shaw & Sons, Ltd. 6s. net.

This book sets out extracts from the judgments in cases relating to "special reasons" and "special circumstances" under the Road Traffic Act, 1930. The advocate who appears in motoring cases will find this a most useful book to have with him in court when the question of disqualification, etc., arises. The book is in the form of extracts from the judgments with a short statement of the facts and the decision, and there is a thumb index with the name of each case.

Whilst commending this book to all advocates in road traffic cases, we must make some minor criticisms. Firstly, the only law reports cited are the All England Reports and the *Justice of the Peace* Reports. Secondly, there is no index or other table to direct the reader to the salient points of each case and he must carry in his own mind, if he wants to use the book, the name of the case which relates to the point at issue. Thirdly, there is no reference to the English cases of *Pollard* v. *Light* (1950), 48 L.G.R. 447, and *Gott* v. *Chisholm* (1950), 114 J.P. News. 212. The last-mentioned case could usefully be introduced as a note to the case of *Reay* v. *Young* [1949] 1 All E.R. 1102 and *Pollard's* case could surely take the place of *R.* v. *The Recorder of Leicester, ex parte Gabbitas* [1946] 1 All E.R. 615, which really adds nothing to the law on "special reasons" and presumably has been included by Mr. Blake Carn from motives of local pride. No Scottish or Irish cases on special reasons are mentioned but, while suggesting that some of these might be helpful, we appreciate that to include them would probably increase the size and price of this little book.

Heywood & Massey: Court of Protection Practice. Seventh Edition. By DONALD G. HUNT, of the Court of Protection, and JOHN F. PHILLIPS, LL.M. (Cantab.), of Gray's Inn, Barrister-at-Law. 1954. London: Stevens & Sons, Ltd. £5 5s. net.

There are at least two reasons why a really good book on this subject is particularly welcome. One is that this is a part of the law into which the average practitioner does not often have to venture, and the opportunities which are elsewhere available for getting to know the practice of the court are here too scanty to enable him to pick it up as he goes along. The other is that, partly because of its history, and partly because of the particular care which has to be taken to consult the interests of those who cannot consult their own, the procedure of the Court of Protection is very complicated and a slip somewhere very often means going back and beginning again at the beginning. "Heywood and Massey" has always had a reputation for accuracy, and in this edition the process of revising and bringing up to date (in a much more extensive sense than merely adding new matter in the appropriate places) a text-book of quite venerable age has been completed. The result is excellent. The matter is much better arranged than before, and this is doubtless the result of practical experience on the part of one of the editors at least of the kind of difficulty felt by solicitors, and his evident aptitude for indicating the way out. A feature of this book which is likely to be particularly useful is the collection of forms, which includes many conveyancing forms as well as forms for use in contentious matters, and which occupies altogether something over one-fifth of the volume.

A Guide to the Housing Repairs and Rents Act, 1954. Current Law Guide No. 11. By ASHLEY BRAMALL, B.A. (Oxon), of the Inner Temple, Barrister-at-Law. 1954. Sweet and Maxwell, Ltd.; Stevens & Sons, Ltd. 8s. 6d. net.

This publication well deserves the name of "guide." A most useful introductory chapter is followed by seven in which we are taken through the actual provisions of the new Act, and a ninth containing information on kindred matters; the text of the statute and that of the Housing Repairs (Increase of Rent) Regulations, 1954, concludes the work. We have called the first chapter "useful" because the references to history, to White Papers, and to other legislation which accompany a short survey of the Act greatly assist the reader in understanding what is intended. We have praised the work as a "guide" because the author, while dealing in general with the matter in the order in which it appears, rightly occasionally departs from that order (but never digresses too far). There are very few comments to be made on the details of the work, but perhaps the author, when criticising the expression "controlled tenancy" on page 9, has overlooked the fact that the Increase of Rent, etc. (Restrictions) Act, 1920, does at least use the words "statutory tenancy" in a marginal heading, and that the heading to s. 15; while there is no similar characterisation of the tenancy acquired by a widow, etc., by virtue of s. 12 (1) (*g*). When acclaiming the abolition of power to make byelaws (chap. 4) he might have reminded us that local Acts may still preserve differences (e.g., the Middlesex County Council Act, 1944), though no doubt in future private Bills containing proposals which would militate against uniformity will be coldly received. Such points as these, however, are not meant to and do not reflect on the value of the guide, which will render the busy practitioner speedy and effective assistance.

Dayes' Handy Book of Solicitors' Costs. Ninth Edition. By T. O. CARR. 1954. London: Sweet & Maxwell, Ltd. £2 2s. net.

This is, indeed, as its title claims, a handy book, and one of the most distinctive features about it is the steps in action in the various divisions of the High Court and county court, and the page references to the corresponding charges. The former will prove a useful asset, particularly for costs clerks lacking experience in litigation, for it will enable them to check that no item which can be charged in the bill of costs has been omitted. Indeed, it will prove useful, too, for the junior litigation clerk as a guide to the progress of an action. This portion of the book is comprehensive and covers the general course of actions in the various divisions.

The charges and disbursements portion of the book is arranged in alphabetical order, and has been well prepared, so that any particular item may be traced readily.

The arrangement adopted by the author is unfamiliar to costs clerks accustomed to using precedents of costs, but it has the advantage of saving space, since the repetition of items which recur throughout an action is obviated. It would, however, take longer for an inexperienced costs clerk to compile a bill of costs with the aid of this work than would be the case if he used a book of precedents. Subject to this comment the layout of the book is excellent. It may be thought a pity that the author has not been a little more expansive on the subject of legal aid costs, for he dismisses the subject in less than a page.

Useful and comprehensive tables of conveyancing costs are provided, and in addition to the solicitor's scale fees there are included in the tables other very useful items of information. Thus, in the case of sales, purchases and mortgages the land registry fees on a first registration and a transfer, the building societies' solicitors' scale fees, the stamp duties and the estate agents' and valuers' fees are given. This, as the author justly claims, will enable a solicitor to advise a client precisely how much his total outlay will be in respect of a particular transaction. The scale fees and other information indicated above are given, in the case of sales, purchases and mortgages, for amounts ranging from £5 to £100,000. Similar comprehensive information is given in tables relating to leases.

So far as Sched. II costs are concerned, the author, very wisely it may be thought, offers no suggestion as to the basis upon which a "fair and reasonable" charge is to be computed under that schedule.

There is a useful table of leading cases on costs, arranged in alphabetical order according to subject.

The Queen has been pleased to appoint Mr. WILLIAM ARNOLD SIME to be Recorder of the Borough of Grantham with effect from 23rd August.

Brigadier FRANK MEDLICOTT, C.B.E., M.P., has joined the Board of Directors of the Temperance Permanent Building Society.

Country Practice

GOOD FOR THE CROPS

An odd remark was made to me about three years ago in a little sweets and tobacco shop, somewhere in London. I had been proceeding on foot between points *A* and *B* instead of queueing up for a bus. While the shopkeeper was dealing with my requirements, someone mentioned the weather. "Well," he said, "it'll be good for the crops."

That remark has mystified me ever since. Did he recognise me as an immigrant from the countryside, in the instinctive way that a French railway porter can distinguish nationality at one glance? As far as I could tell, there were no straws sticking out of my hair, and my dress was what I suppose would be worn by an impoverished London solicitor, if you can picture such a thing. Can it be that Cockneys can actually *smell* countrymen? Or do Londoners really care about the crops?

A country solicitor, to be happy or even prosperous, need not possess any detailed knowledge of agriculture. Cows can develop American blight, and an acre of swedes be laid waste with the gapes, and I would fail to see anything wrong at all. Agricultural lore becomes of professional interest only at agricultural tribunals and such-like; but in those circumstances the respective valuers are generally allowed to thrash it out expertly for the benefit of the farmers, while the lawyers in attendance doodle, or try not to. Nevertheless, the subject of weather is of some concern to most country practitioners.

Snow, for instance, means that one will not see one's outlying clients for days or weeks, but the nearby clients will tramp into the general office in encouraging numbers. Thus an urgent probate ceases to be urgent, and one finds that the snowfall has brought with it some new wills, a batch of debt collections, and one or two things one hesitantly labels matrimonial. It can also bring about a broadening of outlook, when the cashier is snowbound and the conveyancing expert has to take instructions for an income tax appeal. In my own office, the appearance of an outlying partner attired, *inter alia*, in hunting stock, leather jerkin, R.A.F. trousers and Wellington boots gave the same sort of boost to our snowbound office morale as I had earlier experienced in the infantry when the R.A.F. did something really noisy and spectacular half a mile ahead.

In summer time—even in 1954—different considerations apply. One good spell of warm weather can clear up more doubtful titles, wind up more intricate trusts, and deliver more bills of costs than an extra managing clerk. At haytime, for instance, the B.B.C. only has to say: "Weather will continue fine and warm for the next few days," and, in a hundred country practices, hands will reach for old and tatty files in the certainty that, thank heavens, there will be no interruptions while solicitor and client, in different senses, make hay. The inventors and perfectors of silage and grass drying techniques have rendered the stoppage in the flow of clients less complete in some areas, but in my view, the profession has little to fear from their activities.

Later on, harvest again stems the tide of clients. With changeable weather, they will continue to intrude, but with a good dry spell a year's accumulation of current files can be thrashed unceasingly, classified as dead, and sent upstairs to the dusty granary of forgotten matters.

With weather too perfect, the system has been known to break down. It can happen, I am told, that a solicitor, after looking at the letters, looks out of the window at the perfect blue of a summer sky, and quietly disappears from sight. If you ring up a country office, and can only speak to a girl who knows nothing about anything, you will know what has happened. The gentleman dealing with the matter is messing about in boats.

"HIGHFIELD"

SURVEY OF THE WEEK

STATUTORY INSTRUMENTS

Agricultural Goods and Services Schemes (Amendment and Extension) Order, 1954. (S.I. 1954 No. 1098.)

Agriculture (Provision of Goods) Extension of Period Regulations, 1954. (S.I. 1954 No. 1097.)

Argyll County Council (Laroch River and Allt Socaich) Water Order, 1954. (S.I. 1954 No. 1101 (S.103).) 5d.

County Court Fees (Amendment) Order, 1954. (S.I. 1954 No. 1106 (L.11).) 5d.

This order, which came into operation on 30th August, prescribes the fee on an application to the county court under Pt. II of the Housing Repairs and Rents Act, 1954, and makes a number of amendments to the Fees Order of 1949. The fees affected are Nos. 1, 11, 25, 26, 32 and 66.

County of Inverness (Sruthan na Heasha, North Uist) Water Order, 1954. (S.I. 1954 No. 1102 (S.107).) 5d.

Landlord and Tenant (Notices) Regulations, 1954. (S.I. 1954 No. 1107.)

As to these regulations, see p. 595, *ante*.

London Traffic (Parking Places) Consolidation (Amendment) (No. 2) Regulations, 1954. (S.I. 1954 No. 1100.) 5d.

London Traffic (Prescribed Routes) (No. 16) Regulations, 1954. (S.I. 1954 No. 1099.)

Poisons List (No. 2) Order, 1954. (S.I. 1954 No. 1095.)

Poisons (No. 2) Rules, 1954. (S.I. 1954 No. 1096.) 5d.

Road Transport Lighting Act, 1953 (Commencement No. 1) Order, 1954. (S.I. 1954 No. 1104 (C.9).) 5d.

Road Vehicles Lighting Regulations, 1954. (S.I. 1954 No. 1105.) 11d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

CITY OF PORTSMOUTH DEVELOPMENT PLAN

The Minister of Housing and Local Government has under consideration the modification of the City of Portsmouth development plan so as to show a different alignment of the new road proposed from Unicorn Road to Thomas Street and Commercial Road and known as the Dockyard Loop Road. A plan showing the suggested modification is available at the City Council Chambers, Clarence Parade, Portsmouth, and may be seen there at all reasonable hours. The Minister is prepared to consider any representations with respect to the proposed alteration in the alignment of the road which are made in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 30th September, 1954.

The Midland Bank Executor and Trustee Company announces that Mr. E. L. Hammond, at present Manager of the Leeds branch, has been appointed an Assistant General Manager of the Company as from 1st September.

POINTS IN PRACTICE

Agricultural Holding—Agreement to Repay Compensation Payable under 1948 Act

Q. *A* is the owner of an agricultural holding within the meaning of the Agricultural Holdings Act, 1948. He is desirous of improving his stock but cannot find the necessary capital to do this. He approaches *B* and offers to sell the property at a certain price and then to rent the property from the new owner. As an inducement to cause *B* to buy these premises *A* promises that should he vacate the holding or be evicted therefrom by proper notice he will not claim compensation to which he might be entitled under the Agricultural Holdings Act. An agreement is then drawn up between *A* and *B* whereby *B* agrees to purchase the property at a fixed sum and to allow *A* to remain as his tenant, and *A* in consideration of *B's* buying the premises undertakes to pay to *B* at the determination of the tenancy a sum equal to the amount of the compensation to which *A* would be entitled under the Agricultural Holdings Act. Is this agreement valid having regard to s. 65 (1) of the Agricultural Holdings Act, 1948?

A. In our opinion, while the proposed agreement is more ingenious than any which has so far been reported to have come before the courts, it could not effectively debar *A* from claiming compensation under the Act. Even if "may be entitled" replaced "would be entitled," giving *B* an agreed right to recover the amounts awarded from *A* after paying them, we consider that that agreement would be unenforceable, being entered into with the object of depriving *A* of his statutory rights. We would cite Lord Loreburn, L.C.'s terse paraphrase (of corresponding provisions) in *Cathcart* v. *Chalmers* [1911] A.C. 246: "You shall not by private contract deprive a tenant of his right to claim compensation under this Act, or, if you do, then your contract *so far as it deprives him* of such right shall be void."

Housing Act, 1936 — Demolition Order — Owners not Traceable — Agents Collecting Rents — Expense of Demolition

Q. In 1938 a demolition order under s. 11 of the Housing Act, 1936, was made by a local authority requiring a dwelling-house to be demolished within six weeks after it should be vacated. The agents, who were collecting rents, last received rent a few days before the order was made. As the owner of the house could not be traced, the local authority recently demolished the dwelling-house and they are now seeking to recover the expense of the demolition from the agents on the ground that the agents are the owners because they received the rent even though only for the purpose of handing it to some other person. Is there any ground for this opinion?

A. In our opinion, the authority's demand is misconceived. In the first place, it is only when a notice to execute works which render a house fit for occupation is served, and the works are executed by the authority on non-compliance, that the person having control (which includes an agent receiving rack-rent) comes into the picture at all, i.e., when ss. 9 and 10 of the Act are operated. And even in that case, the agent may limit his liability to sums received since the service of the notice to execute works (not their execution by the authority): s. 10 (3), proviso. But when demolition is resorted to under s. 11 (the house not being capable of being rendered fit at reasonable expense), it is the "owner" as defined in s. 188 who is liable for the expenses (credit being given for proceeds of sale of materials) under s. 13; and that definition does not cover rent-collecting agents as does the definition of "person having control" in s. 9 (4).

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, 102-103 Fetter Lane, London, E.C.4.

They should be **brief, typewritten in duplicate,** and accompanied by the name and address of the sender **on a separate sheet,** together with a **stamped addressed envelope.** Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.

NOTES AND NEWS

Honours and Appointments

Mr. Jack Evans, solicitor, of Leeds, has been appointed deputy coroner for the City of Leeds.

Mr. Victor Henry Mellor, at present assistant solicitor to Margate Borough Council, has been appointed deputy town clerk of New Malden in succession to Mr. Sydney Astin, deputy town clerk since 1950, who has been appointed clerk to East Barnet Council.

Mr. John Spencer Mills, chief assistant solicitor to Lancashire County Council for three years, has been appointed second deputy clerk to Essex County Council.

Mr. John Edgar Rogers, solicitor, of Merthyr Tydfil, has been appointed assistant solicitor to Merthyr Corporation, in succession to Mr. David Edward Smith, who leaves shortly to begin his duties as clerk to Porthcawl Urban Council.

Mr. Brian Slater has been appointed assistant solicitor to Huddersfield Corporation.

The following appointments are announced in the Colonial Legal Service: Mr. C. M. MacGregor, Puisne Judge, Jamaica, to be Senior Puisne Judge, Jamaica; Mr. A. E. Otto, Assistant Land Officer, Tanganyika, to be Resident Magistrate, Tanganyika; Mr. F. Addison to be Resident Magistrate, Tanganyika; and Mr. K. C. Brookes to be Crown Counsel, Kenya.

Wills and Bequests

Mr. H. Jefferson, solicitor, of Belfast, left £74,015.

Mr. S. B. Wright, solicitor, of Leicester, left £41,960 (£40,366 net).

Lord Morris of Kenwood, solicitor, of Sheffield, left £14,235 (£2,472 net).

OBITUARY

Mr. E. G. Roscoe

Mr. Edward Gawne Roscoe, solicitor, of Lincoln's Inn, W.C.2, died on 19th August, aged 79. In 1938 he was installed as Master of the City Solicitors' Company and was also a member of the Council of London Chamber of Commerce. He was admitted in 1901.

Major A. A. Williamson

Major Andrew Arnold Williamson, solicitor, of Crewkerne, Somerset, died on 26th August. He was admitted in 1935.

SOCIETIES

The Solicitors' Managing Clerks' Association announce that a series of classes for junior law clerks has been arranged for the coming winter. These will be held on Monday evenings at 6.15 p.m. in the Lord Chief Justice's Court commencing on Monday, 4th October next. Further details and applications for tickets are now available at the offices of the Association, Maltravers House, Arundel Street, Strand, W.C.2.

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